THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 7th day of December,2007

W.P.Nos.7161, 7162, 7163, 7176, 7177 and 7178 of 2000

W.P.No.7161 of 2000

Between:-

L.V. Prasad Eye Institute,
Road No.2, Banjara Hills,
Hyderabad, rep. by its
Administrator – Smt.Vijaya L.Ramam … Petitioner

and

Labour Court-I, Chandra Vihar,
Hyderabad, rep. by its
Presiding Officer & another … Respondents

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COMMON ORDER:

In all these Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

Petitioner is the Management of L.V. Prasad Eye Institute, represented by its Administrator-Smt.Vijaya L.Ramam. Respondent No.2 is the workman.

In these Writ Petitions, the Awards passed by the Labour Court directing the petitioner-Management to reinstate the respondent-workmen with continuity of service, full back wages and all other attendant benefits is under challenge.

The 2nd respondent-workmen filed petitions under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') seeking to set aside the orders of dismissal from service passed against them and for consequential benefits. It was their case that they were working in various capacities with the petitioner-Management. While so, a charge sheet-cum-show cause notice was issued by the Management on 5-4-1995 stating that the workmen along with others gathered outside the wicket gate with a common motive, even though they were supposed to leave to their residence at the end of their work, in the same evening, and when two other employees of the Institute, namely, Sekhar and Chenchunaidu came out of the wicket gate and

waiting for the transport van, the workmen surrounded the said two persons and had an altercation, abused and threatened them with dire consequences. The workmen, who were all part of the gathering beat up the said Sekhar and Chenchunaidu with chappals and threw them on the ground and also assaulted with fists and blows, in the course of which, the shirt of Chenchunaidu was torn and they were injured, and asked the workman to explain as to why action should not be taken, since the same amounted to a major misconduct and an act of subversive of indiscipline under Rule 20(k) and (x) of the A.P. Model Standing Orders. The workmen submitted their explanation denying the allegations made against them. However, an enquiry was sought to be conducted and the workmen protested for conducting such an enquiry, since the criminal proceedings, which are identical in nature, were pending. But, an *ex parte* enquiry was conducted and the workmen were dismissed from service. Aggrieved by the same, they filed the claim petitions under Section 2-A(2) of the Act. It was their contention that the enquiry was not properly conducted and they have no opportunity to participate in the same. In fact, the enquiry itself could not have been conducted in view of the fact that the charges levelled and the evidence led in both the criminal case and departmental proceedings are one and the same. Further, the allegations made against the workmen, assuming that they are true, arose outside employment and the management has no jurisdiction to conduct a domestic enquiry and remove them from service. Assuming that there is some such misconduct, the same was trivial in its nature and the punishment of dismissal from service is shockingly disproportionate to that of the misconduct committed by them. Petitioner-Management had filed a detailed counter stating that firstly, in spite of giving several opportunities, the workmen did not participate

in the enquiry and the incident, which occurred is nothing but beating the fellow workmen, since they have not responded to the black badge protest organized by the workmen. May be, the incident occurred outside the gate of the organization, but it is very much connected with the employment and amounts to subversive of indiscipline as per the Model Standing Orders. Secondly, the very dispute is not maintainable under Section 2-A(2) of the Act, since the petitioner-Management is not an industry under Section 2(j) of the Act and it is a non-profitable organization and a research oriented body serving for the cause of humanity. Further, the misconduct is grave in nature and the punishment of dismissal from service is proportionate to that of the misconduct and no interference is called for by the Labour Court.

Before the Labour Court, on behalf of the workman-respondent(s) W.W.1 was examined and Exs.W1 to W22 were marked. On behalf of the Management, M.Ws.1 and 2 were examined and Exs.M1 to M235 were marked and additional evidence was also recorded in respect of each workman. After elaborate consideration of the entire evidence on record, the Labour Court came to the conclusion that the Management has failed to establish the charges framed against the workmen and the Enquiry Officer gave his findings on mere surmises and conjectures. In fact, the enquiry itself was conducted contrary to the settlement under Sec.12(3) of the Act entered into between the Management and the Union. The Regulations relied upon by the management were not displayed or made known to the workmen. Under what Regulations the services of the workmen were dispensed with is not known. It was further held that the petitioner-management is an industry. The Orders of dismissal from service of the workmen were found to be arbitrary and illegal and thus set aside the same. The workmen were directed to be reinstated with continuity of service, full

back wages and other attendant benefits. Aggrieved by the same, the present Writ Petitions are filed.

Smt.G.Sudha, learned counsel appearing for the petitioner, strenuously contended that :

(i) the provisions of the Industrial Disputes Act,1947 have no application to the petitioner-management and it is not an industry within the meaning of Section 2(j) of the Act; therefore, the petitions under Section 2-A(2) of the Act themselves are not maintainable in view of the judgment reported in **PHYSICAL RESEARCH LABORATORY v. K.G.SHARMA**[1];

(ii) the Labour Court having held that the domestic enquiry conducted by the Management is valid, gave a perverse finding that the Enquiry Officer was biased etc., and

(iii) the incident that resulted in the dismissal of the respondent-workmen arose during the course of employment and it is very much connected with the employment of the workmen.

Whereas, Sri K.Balagopal, learned counsel appearing for the respondent-workmen, supported the impugned Awards passed by the Labour Court and contended that the petitioner-Management is an industry within the meaning of Section 2(j) of the Act. Labour Court did not give a finding on the basis of 'biased attitude of the Enquiry Officer' and it found that there was no riotous or disorderly conduct on the part of the workmen. Further, when the criminal case ended in acquittal, there was no necessity of proceeding with the enquiry departmentally, since the charges framed in the criminal case as well as in the domestic enquiry and the witnesses sought to be examined are one and the same. The incident that occurred which resulted in the dismissal of the workmen is not connected with the employment. At the most, it was an internal disciplinary matter of the Union and its members not connected with the employment of the petitioner-

Management. Labour Court, rightly, on the basis of the evidence let in before it held that the petitioner-organization is an industry within the ambit of Section 2(j) of the Act. The judgment reported in **PHYSICAL RESEARCH LABORATORY**'s case (supra) has no application to the facts of these cases. M.W.1 himself admitted in his cross-examination that the petitioner-management is a Hospital. Conducting enquiry was not necessary particularly during the pendency of the criminal case. Therefore, the enquiry conducted by the Management was not fair and proper. Even otherwise, the Enquiry Officer's findings were perverse and as such, the Labour Court has not committed any error calling for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Awards and other material made available on record.

(i) Whether the petitioner is an 'industry':

It is the contention of the petitioner that it is a research oriented institute and it has no profit making motive. It is a health care unit for eradicating blindness on the earth, established by Hyderabad Eye Institute and Hyderabad Eye Research Foundation. The research is the dominant factor of the management-institute and not the treatment. It does not fit into the straight jacket of the definition of 'industry' under Section 2(j) of the Act. The Judgment reported in **PHYSICAL RESEARCH LABORATORY**'s case is squarely applicable to the facts of the present case. The Institute is a class by itself. In this regard, the Labour Court noticed that on 26-11-1998 it rejected the plea of the management to lead evidence on the point of jurisdiction. Aggrieved by the same, the management approached this Court and filed Writ Petition No.33223 of 1998 with a prayer to reopen the I.D. and to provide opportunity to lead evidence with regard to the

preliminary objection, whether the Research Institute comes within the purview of 'industry' or not and whether the Act is applicable to the petitioner-management. While disposing of the said Writ Petition on 5-12-1998 this Court directed the Labour Court to permit the management to adduce evidence, both oral and documentary, only on the question as to whether the petitioner-management is an industry within the meaning of Section 2(j) of the Act and thus voluminous evidence was led in all the I.Ds. The Labour Court found that Exs.M3 and M4 reveal the activity of the Institute and the main activity is running a modern eye hospital. The other objects are to have training centres, research, rural rehabilitation centres, outright programmes etc. Therefore, the management-institute is an undertaking and its main aim is to provide services to satisfy human wants by collecting money from all paying patients. Further, it has 300 employees on its rolls, out of them 105 are attending the unskilled labour activity in the institute. Their activity is organized by cooperation between institute and the workmen to serve the purpose of eradicating eye diseases. The nature of activity in the institute is attending to all types of patients. Labour Court further considered the judgment relied upon by both the parties i.e. **BANGALORE WATER SUPPLY & SEWERAGE BOARD v. A. RAJAPPA**[2] with respect of research institutes and held that even though a research institute may be a separate entity, disconnected from main industry, which founded the institute itself, it can be regarded as an organization propelled by systematic activity modelled on cooperation between the employer and employee and calculated to throw up discoveries and inventions and useful solution, which benefits the individuals, industries and the nation in terms of goods, service and wealth. Thus, research institutes albeit run without profit motive are industries. It was held that the petitioner-institute is

not a research institute and it is an industry as defined under Section 2(j) of the Act and the dispute referred to is an industrial dispute under Section 2(k) of the Act.

In fact, in the evidence it has come out that every day 300 to 400 patients visit the hospital and they are treated on payment basis. Apart from this, may be, the institution is taking up some charitable work and also research work, which cannot be separated from that of the main activity. In a case of this nature, the human organ (eye) itself is an object of research. While attending to the patients the Doctors may also find out certain things very interesting and the data collected while attending on various patients would be of a great help for research and development also. But that does not mean that it is exclusively a research institute and no fees is being collected from the patients and as such, it cannot be called an industry as per Section 2(j) of the Act. Hence, I am of the opinion that the petitioner-organization apart from being a business undertaking, avocation of workmen is also involved. As such, I am in full agreement with the submissions made by the learned counsel for the respondent-workmen that the **PHYSICAL RESEARCH LABORATORY** case (supra) has no application to the facts of the present cases. Therefore, petitioner-organization is an industry within the meaning of Section 2(j) of the Act. It is a systematic activity carried out by cooperation between an employer and its workmen for production, supply or distribution of goods or services with a view to satisfy the human wants.

(ii) and (iii) Whether the Labour Court could have gone into the conduct of the Enquiry Officer having held that the domestic enquiry conducted by the Management was valid - whether the incident which resulted in dismissal of the workmen arose during the course of employment and it is connected with the

employment of the workmen.

It is an admitted fact that the workmen did not participate in the enquiry conducted by the Management, since they represented before the Enquiry Officer saying that the charges framed against them and evidence sought to be let in in the domestic enquiry and the charges framed in the criminal case and the evidence sought to be led therein are identical. Be that as it may, the workmen have not challenged as to the proceeding with the domestic enquiry pending the criminal case and they have not stated what exactly is the prejudice caused to them. The criminal case ended in acquittal. Merely because the criminal case ended in acquittal that does not mean that the departmental enquiry cannot be proceeded with. It is always permissible for the Department to conduct enquiry and pass appropriate Orders. In these cases, the Presiding Officer of the Labour Court did not base his findings for the purpose of holding that the respondent-workmen are not guilty of the charges. Only on the findings of the Enquiry Officer or the observations made by the Enquiry Officer a passing reference of bias was made, but that was not the real base for setting aside the dismissal order passed by the petitioner-Management. The Labour Court has taken each and every aspect into consideration and meticulously gave its reasons for finding that the workmen were not guilty of the charges. Of course, the Labour Court held that there was no connection between the employment and the conduct of the respondent-workmen. Insofar as this aspect is concerned, I am of the opinion that the grudge grew when some workmen did not participate in the black badge demonstration along with other Union members and, therefore, when the persons who did not participate in the said demonstration came out of the gate, they were beaten up blue and black by the respondent-workmen. But, absolutely, there is no medical

evidence to show that those people were beaten blue and black. However, it cannot be said that there was no misconduct on the part of the respondent-workmen and that is not connected with the activity of the petitioner-industry. Once the persons, who were beaten and those who beat are members of the Union and working in the petitioner-organization and the grouse grew was because of the activity relating to the industry, it cannot be said that there was no relationship between the incident and the employment of the workmen with the petitioner. There is a relationship, but it is very remote. It is further interesting to notice that either on the very same day or thereafter, there was any disturbance within the premises of the organization which caused industrial unrest. But the conduct of the respondent-workmen was more of a criminal nature and a criminal case was, in fact, registered and after full trial, they were all acquitted. The witnesses examined in the Departmental enquiry and in the trial before the appropriate criminal Court were one and the same. Therefore, the order of acquittal passed by the competent criminal court could have also been taken into consideration, while imposing the punishment of dismissal from service. With regard to bias, learned counsel for the petitioner relied upon various judgments of the Apex Court to show that whenever the enquiry was held to be biased, it must be set aside and the management should be permitted to lead evidence. But, there is no necessity of going into all these things, since I am in agreement with the submissions made by the learned counsel for respondents that, as stated above, except a passing reference as to the bias, what exactly was the bias on the part of the Enquiry Officer, was not made out. In fact, this did not form part of decision making process of the Labour Court.

In the peculiar facts and circumstances of these cases, I am of

the opinion that imposition of the ultimate punishment of dismissal from service is shockingly disproportionate to that of the misconduct alleged against the respondent-workmen. As such, the Labour Court cannot be said to be wrong in setting aside the dismissal order and directing reinstatement. However, I am in agreement with the submissions made by the learned counsel for the petitioner that the respondent-workmen, since involved in a misconduct, which is connected with the employment of the petitioner, were not entitled for any back wages, applying the theory of 'no work no pay'. In view of this, the contention of the learned counsel for the respondents that not granting back wages may amount to encouraging the management to do away with the services of its employees illegally and then thereafter get away without paying any back wages, cannot be countenanced. In a given case, back wages can be awarded, but these are not the cases where the respondent-workmen, who involved in the misconduct, cannot be allowed to get away scot-free.

In view of the above, the Awards passed by the Labour Court are modified to the following extent:

> "The workmen are entitled to reinstatement with continuity of service and all attendant benefits, but without any back wages. However, the back wages, if any, paid shall not be recovered".

With the above modification of the impugned Awards, the Writ Petitions are disposed of.

07-12-2007

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[1] AIR 1997 SC 1855

[2] AIR 1978 SC 540